

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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DIANE L. RHODES-LYONS,

Plaintiff,

v.

UNITED STATES OF AMERICA; et al.,

Defendants.

2:11-cv-1906-LRH-CWH

ORDER

Before the court is defendant the United States of America's ("United States") motion for summary judgment. Doc. #23.¹ Plaintiff Diane L. Rhodes-Lyons ("Rhodes-Lyons") filed an opposition (Doc. #25) to which the United States replied (Doc. #29).

I. Facts and Procedural History

Plaintiff Rhodes-Lyons owes undisputed back taxes for the tax years 2003-2008 in the amount of \$28,287.88. On September 4, 2009, Rhodes-Lyons entered into an agreement with the United States in which she would pay \$583 a month until her back tax obligations were satisfied. This agreement was documented on a Form 9297 Summary of Taxpayer Contract. Doc. #7, Exhibit 2.

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¹ Refers to the court's docket entry number.

1 Rhodes-Lyons made two successive payments, but before she could pay her third
2 installment she was served with a notice of levy on wages, salary, and other income. During the
3 levy, Rhodes-Lyons moved out of her apartment and gave away various personal property and
4 furniture.

5 On February 7, 2012, Rhodes-Lyon filed a complaint against the United States challenging
6 the levy on her wages, and bank accounts, and alleging that the levy caused economic damages
7 including the loss of personal property and furniture. Doc. #7. Thereafter, the United States filed
8 the present motion for summary judgment. Doc. #23.

9 **II. Legal Standard**

10 Summary judgment is appropriate only when “the pleadings, depositions, answers to
11 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
12 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of
13 law.” Fed. R. Civ. P. 56(c). In assessing a motion for summary judgment, the evidence, together
14 with all inferences that can reasonably be drawn therefrom, must be read in the light most favorable
15 to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,
16 587 (1986); *County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001).

17 The moving party bears the burden of informing the court of the basis for its motion, along
18 with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*,
19 477 U.S. 317, 323 (1986). On those issues for which it bears the burden of proof, the moving party
20 must make a showing that is “sufficient for the court to hold that no reasonable trier of fact could
21 find other than for the moving party.” *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir.
22 1986); *see also Idema v. Dreamworks, Inc.*, 162 F. Supp. 2d 1129, 1141 (C.D. Cal. 2001).

23 To successfully rebut a motion for summary judgment, the non-moving party must point to
24 facts supported by the record which demonstrate a genuine issue of material fact. *Reese v. Jefferson*
25 *Sch. Dist. No. 14J*, 208 F.3d 736 (9th Cir. 2000). A “material fact” is a fact “that might affect the
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1 outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
2 (1986). Where reasonable minds could differ on the material facts at issue, summary judgment is
3 not appropriate. *See v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A dispute regarding a material
4 fact is considered genuine “if the evidence is such that a reasonable jury could return a verdict for
5 the nonmoving party.” *Liberty Lobby*, 477 U.S. at 248. The mere existence of a scintilla of
6 evidence in support of the plaintiff’s position will be insufficient to establish a genuine dispute;
7 there must be evidence on which the jury could reasonably find for the plaintiff. *See id.* at 252.

8 **III. Discussion**

9 Rhodes-Lyons brings her complaint pursuant to Section 7433 of the Internal Revenue Code,
10 found at 26 U.S.C. § 7433. Section 7433 allows taxpayers to recover the actual economic loss
11 caused by the disregard of the Internal Revenue Code, or its regulations, by the Internal Revenue
12 Service’s employees during the collection of federal tax obligations so long as those economic
13 losses are a proximate cause of the employees’ conduct. 26 U.S.C. §§ 7433(a)-(b).

14 In her complaint, Rhodes-Lyons claims that as a result of the improper levy she was forced
15 to move out of her apartment and thereby sustained damages including the loss of personal property
16 and furniture. Doc. #7. The court has reviewed the documents and pleadings on file in this matter
17 and finds that Rhodes-Lyons has failed to establish that the levy was the proximate cause of her
18 economic losses. First, it is undisputed that she suffered no economic losses as a result of the IRS
19 levy on her bank account because the levy failed to return any funds. Second, it is also undisputed
20 that the IRS recovered less money from the wage levy than Rhodes-Lyons was required to pay
21 under the repayment agreement. Thus, the damages she sustained, including moving out of her
22 apartment, would have occurred regardless of the levy as she would have had to pay more money to
23 the IRS per the agreement. Finally, there is no evidence before the court that Rhodes-Lyons would
24 have been able to maintain her apartment given her other monetary obligations had the levy not
25 been in effect. Therefore, the court finds that there is no proximate cause that the IRS levy caused
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1 the alleged economic losses. Accordingly, the court shall grant the United States' motion for
2 summary judgment.

3 IT IS THEREFORE ORDERED that defendant's motion for summary judgment (Doc. #23)
4 is GRANTED. The clerk of court is directed to enter judgment in favor of defendant the United
5 States of America and against plaintiff Diane Rhodes-Lyons.

6 IT IS FURTHER ORDERED that plaintiff's motion for jurisdiction (Doc. #28) is DENIED.

7 IT IS SO ORDERED.

8 DATED this 24th day of January, 2013.



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11 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE